Dec 22 1872

Submitted

Judge Clifford

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~277~~. 82

HENRY B. PLANT, PLAINTIFF IN ERROR,

vs.

JOSIAH STOVALL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

Aff'd

FILED NOVEMBER 2, 1870.

Pet Dismissed
Remittitur issued
Feb 3, 1873
Affirmed —
Damages

SUPREME COURT OF THE UNITED STATES.

No. 277.

HENRY B. PLANT, PLAINTIFF IN ERROR,

vs.

JOSIAH STOVALL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

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GEORGIA, *Richmond County:*

To the superior court of said county:

The petition of Josiah Stovall showeth that H. B. Plant has endamaged him in the sum of two thousand dollars, for that whereas the said defendant before and at the time of the delivery of the goods to him as hereinafter next mentioned, was, and from hence hitherto has been, and still is, a common carrier of goods and chattels for hire, to wit, from Augusta and the several landings on the Savannah River to the city of Savannah in said State. And whereas, also, the said plaintiff whilst the said defendant was such common carrier as aforesaid, to wit, on the 27th day of December, 1866, at a landing on the Savannah River, in said county of Richmond, in said State, known as Landing, caused to be delivered to said defendant, and his agents and employees, and the said defendant then and there accepted and received of
2 and from the said plaintiff, a certain lot of sawed lumber, plank, and timber of oak, ash, and hickory, amounting to fourty thousand feet, or other large amount, and of the value of two thousand dollars, or other large sum, to be safely and securely carried and conveyed by the said defendant from the said landing, on the said Savannah River aforesaid, to the said city of Savannah aforesaid, and then, to wit, at the city of Savannah aforesaid, safely and securely to be delivered for the said plaintiff for certain reasonable reward to the said defendant in that behalf; yet the said defendant, not regarding his duty as such common carrier as aforesaid, but contriving and fraudulently intending *crafity*, subtly to defraud and deceive and injure the said plaintiff in this behalf, did not, nor would not, safely or securely carry or convey the said lumber, or any part thereof, from the said landing on the said Savannah River to the said city of Savannah as aforesaid, nor then, to wit,
3 at the city of Savannah aforesaid, safely or securely deliver the same for the said plaintiff, but, on the contrary thereof, the said defendant, so being such common carrier as aforesaid, so carelessly and negligently conducted themselves with respect to the said goods, lumber, and timber aforesaid, that by and through the mere negligence, carelessness, and improper conduct of the said defendant and his servants in this behalf, the said goods and chattels being of the value aforesaid, afterwards, to wit, the day and year aforesaid, became and were wholly lost to the plaintiff, to wit, at Augusta, in said county and State.

Your petitioner would further show that H. B. Plant has endamaged your petitioner in the sum of two thousand dollars, for that whereas the said defendant upon and at the time of his making of his promise and undertaking hereinafter next mentioned, was the owner, man-
4 ager, controller, and commander of a certain steamboat, vessel, or craft, called the "Eclipse," then in the Savannah River, in said county, and bound from thence to the city of Savannah, in said State, to wit, in the county of Chatham, in said State. And thereupon the said plaintiff heretofore, to wit, in the county of Richmond, in said State, to wit, at a landing on said river, in said county of Richmond, known as Landing, at the special instance and request of the said defendant, caused to be shipped and loaded in and upon and on board of said steamboat, vessel, or craft, whereof the said defendant was then and there such owner, manager, controller, and commander as aforesaid, divers goods and merchandize, to wit, fourty thousand feet (wood measure) of oak, ash, and hickory, sawed lumber, and timber, then in good order and well conditioned, of great value, to wit, of the value of two thousand dollars, to be taken care of, and safely and securely carried

and conveyed by the said defendant, as such owner, manager, con-
5 troller, and commander as aforesaid, in and board of said steamboat, vessel, or craft, from the said landing in said county of Richmond aforesaid, and then, to wit, at said city of Savannah as aforesaid, to be safely and securely delivered in the like good order and well conditioned; and in consideration thereof, and certain freight and reward to the said defendant in that behalf, he, the said defendant, then and there undertook and faithfully promised your petitioner to take care of and safely and securely carry and convey and deliver the said goods, merchandize, and lumber as aforesaid; and although the said defendant so being such owner, master, manager, controller, and commander of said steamboat as aforesaid, then and there had and received the goods and merchandize and lumber to be carried, conveyed, and delivered as aforesaid, and although a reasonable time for the carrying, conveying, and delivering of the said goods, merchandise, and
6 lumber as aforesaid, hath long since elapsed, yet the said defendant, so being such owner, master, controller, manager, and commander of the said steamboat or vessel as aforesaid, not regarding his duty in that respect, nor his said promise and undertaking, but contriving and intending to deceive, injure, and defraud your petitioner in this behalf, did not, nor would not, take care of, and safely and securely carry or convey the said goods, merchandise, and lumber and timber as aforesaid, so shipped in and on board of the said steamboat or vessel as aforesaid from the said landing, in said county of Richmond aforesaid, to Savannah aforesaid, and there, to wit, at Savannah aforesaid, safely or securely deliver the same to your petitioner; but, on the contrary thereof, he, the said defendant, so being such owner, master, manager, controller, and commander of the said steamboat or vessel as aforesaid, so carelessly and negligently behaved and conducted
7 himself with respect to the said goods, merchandise, lumber, and timber, that by and through the mere carelessness, negligence, and improper conduct of the said defendant and his agents and servants in that behalf, the said goods, merchandise, lumber, and timber being of great value, to wit, of the value of two thousand dollars, became and was wholly lost by your petitioner on the day and year aforesaid, in the county and State first aforesaid.

And whereas heretofore, to wit, on the 27th day of December, 1866, in Richmond County, in said State, in consideration that the defendant at his special instance and request, there had the care and custody of divers goods, chattels, merchandise, lumber, and timber of your petitioner, to wit, of goods, chattels, merchandise, lumber, and timber, of the like number, quantity, quality, description, and value, as those in the said first and second counts mentioned, he, the said defend-
8 ant, undertook, and then and there faithfully promised your petitioner, to take due and proper care thereof whilst the said defendant had the care and custody of the same. Yet the said defendant, not regarding his said promise and undertaking, but contriving and intending to injure and defraud your petitioner in the behalf, whilst the said defendant so had the care and custody of the said goods, chattels, lumber and timber, took so little and such bad and improper care thereof, that the same afterwards, on the day and year last aforesaid, to wit, in said county and State last aforesaid, became and were greatly damaged and injured, and wholly lost to your petitioner.

And the said defendant being so indebted, in manner and form aforesaid, undertook and faithfully promised to pay the said several sums of money whenever the should be thereunto afterwards requested.

Yet the said defendant, being so indebted, and to pay the
9 said several sums of money aforesaid, have not paid the same or any part thereof, but the same to pay has hitherto wholly neglected and refused, and doth still neglect and refuse, to the damage of your petitioner, five thousand dollars. Wherefore he brings his suit and prays process may issue requiring the said defendant, either personally or by attorney, to be and appear at the next superior court, to be held in and for said county, to answer your petitioner's complaint.

A. R. WRIGHT,
Plaintiff's Att'y.

Filed in office this May 19th, 1869.

LAFAYETT McLAWS, *Clerk.*

STATE OF GEORGIA, *Richmond County:*

To the sheriff of said county or his lawful deputies, greeting:

JOSIAH STOVALL
vs. } Ass't.
H. B. PLANT.

10 The defendant is hereby required in person or by attorney to be and appear at the superior court, next to be holden in and for the county of Richmond aforesaid, on the second Monday in June next, then and there to answer the plaintiff in an action of assumpsit, as in default of such appearance said court will proceed as to justice may appertain.

Witness the honorable judges of said court this 19 day of May, eighteen hundred and sixty-eight.

LAFAYETT McLAWS, *Clerk.*

STATE OF GEORGIA, *Richmond County:*

Served a copy of the within by leaving it at the place of business, in the city of Augusta, viz, the office of the Southern Express Company, this May 22d, 1868.

JNO. D. SMITH,
Sheriff R. C.

We, the jury, find for the plaintiff fourteen hundred dollars with in'st from the 1st January, 1867.

Jan. 27, 1869.

W'M B. DAVISON, *Foreman.*

11 By consent of council it is ordered that the motion of def't, in the above-stated case for a new trial, be heard in *vaction*, at any day that may be fixed by one day's notice of either party to the other with consent of the judge, with leave to both parties to *accept* to the decision upon such motion with the same *time* as if the same had been heard in term, and it is further ordered that the def't have leave to file his brief of evidence at any time, before the 15th day of March next.

JAN. 29, 1869.

In the above-stated case, on motion of def'd't attorney, it is ordered that the time allowed in a previous order at this term for filing the brief of testimony in said case be extended to March 30 inst.

M'CH 13, 1869.

By consent of counsel it is ordered that the decision of the court upon the above-stated motion, may be rendered in vacation, and that either party shall have 30 days after such decission to except thereto.
M'CH 31, 1869.

12 State of Georgia, Richmond County, in the superior court for said county.

JOSIAH STOVALL } *vs.* HENRY B. PLANT. }

The plaintiff or his counsel will please take notice that as soon as counsel can be heard, a motion will be made for a new trial in the above-stated case, upon the following grounds, viz:

1. That the verdict was contrary to law.
2. That the verdict was contrary to evidence.
3. That the court erred in refusing to charge the jury: "That if the jury find the steamer Eclipse was lost while engaged in navigation in tide-water, and between the States of South Carolina and Georgia, then the navigation is a part of the inter-State commerce, and under the Constitution is within the controll of Congress."
4. That the court erred in refusing to charge the jury: "That if the said state of facts is found to exist by the jury, then the defendant, under the act of Congress of 1851, is liable only for the value of
13 his interest in the said steamer and her freights, if it be shown that he was not engaged in or conniving at the negligence which caused the loss."
5. That the court erred in refusing to charge the jury: "That if the jury find there was a total loss of the vessel and cargo, in the course of the voyage, there was no freight earned and def'd't had no interest in freight."
6. That the court erred in refusing to charge the jury: "That if the jury find that the vessel and cargo were a total loss during the voyage, the def'd't had no further interest in the vessel and freight, and is relieved from his liability to the pl'ff under the act of Congress of 1851."

JOSEPH P. CARR,
Def'd't's Att'y.

Due and legal service acknowledged.
Jan. 29, 1869.

A. R. WRIGHT,
Pl'ff's Att'y.

14 State of Georgia, Richmond County, in the superior court for said county, January term, 1869.

JOSIAH STOVALL } *vs.* HENRY B. PLANT. } Case trial at January term, 1869, and verdict for plaintiff.

And now comes the said defendant by Joseph P. Carr, his attorney, and moves the court for a new trial on the following grounds:

1. That the verdict was contrary to law.
2. That the verdict was contrary to evidence.
3. That the court erred in refusing to charge the jury: "That if the jury find that the steamer Eclipse was lost while engaged in navigation

in the tide-water, and between the States of Georgia and South Carolina, then the navigation is a part of the inter-State commerce, and under the Constitution is under the control of Congress."

4. That the court erred in refusing to charge the jury: "That if the said state of acts is found by the jury to exist, then the defendant under the act of Congress of 1851, is liable only for the value of
15 his interest in the said steamer and her freight, if it be shown that he was not engaged in or contriving at the negligence which caused the loss."

5. That the court erred in refusing to charge the jury: "That if the jury find there was a total loss of the vessel and cargo, in the course of the voyage, there was not freight earned, and defendant had no interest in freight."

6. That the court erred in refusing to charge the jury: "That if the jury find that the vessel and cargo were a total loss during the voyage, the defendant had no further interest in the vessel and freight, and is relieved from his liability to the plaintiff under the act of Congress of 1851."

Wherefore your petitioner prays the usual nisi, and will ever pray, &c.

JOSEPH P. CARR,
Def'd't's Attorney.

Brief of testimony.

The plaintiff first introduced the testimony of H. A. Cook, examined by commission, as follows:

1. Do you know the parties in the above suit, and where do you now reside?

I know the parties. I reside in Binghampton, N. Y.

2. Where did you reside in the fall and winter of 1866?

16 I resided in Richmond County, Ga., 1865-'6.

3. In whose employment were you in the month of December, 1866? Do you know anything of the shipment by plaintiff of a lot of lumber on a steamer on the Savannah River? If yea, please state on what steamer; also the amount and character of the lumber then shipped, and the market value of said lumber in Augusta & Savannah at that time.

I was employed by Josiah Stovall to attend to the loading and shipping a load of lumber; it was loaded on the steamer Eclipse at Stovall's Landing, on the Savannah River, to be carried to Savannah. There was between thirty-five and fourty thousand f't of white oak, ash, and hickory lumber; it was worth in Augusta forty dollars per thousand f't, and about the same in Savannah.

4. Please state what became of said lumber. Did you ever hear defendant or any of his agents or employés say what became of it?

The steamer Eclipse, while on its way down was wrecked
17 and sunk about twenty or thirty miles above Savannah. I have heard the engineer (Mr. Johns) and the agent (Mr. A. Wilcox) say that the steamer Eclipse was blown up. I was told by Mr. Johns that if I could get some flats, and go the wreck immediately I could probibly save most of the lumber.

5. Please state if plaintiff, through any of his agents, and who, made any effort to recover said lumber; and give the reason, if any you know, why such efforts were not successful.

I went to the steamer's agent, Mr. A. Wilcox, and told him that I had engaged a couple of flats to go for the lumber, and asked him if he

had any objections to my doing so. He told me the lumber was in their care, and that he had no authority to let me have it before it arrived in Savannah, but as the steamer was wrecked, he would write to Augusta, and ascertain what could be done about it; but before he could give me any satisfactory answer, the current had washed all the lumber off the steamer. The oak and hickory probably all sunk. Some
18 of the ash was picked up by the wreckers.

6. Please state any other matter, fact, or thing which will go to show that the plaintiff's lumber was lost by the neglect, mismanagement, or default of the defendant or his agents or employees, and all the efforts which you know plaintiff, through his agents, made to recover the whole or a part of said lumber, and what finally became of said lumber?

I know nothing further about the case.

The plaintiff next offered a certified copy of the enrollment.

No. 15.

Permanent

Enrollment, in conformity to an act of Congress of the United States of America entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same, approved February 18, 1793," and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

19 James M. Mulliken, of Savannah, State of Georgia, having taken or subscribed the oath required by the said act, and having sworn that he, 5–12 owner, together with H. B. Plant, 7–12, of Augusta, State of Georgia, are citizens of the United States, and sole owners of the steamboat or vessel called the Eclipse, of Savannah, whereof P. H. Wood is at present master; and as he hath sworn, is a citizen of the United States, and that the said steamboat or vessel was built at Augusta, State of Georgia, in the year one thousand eight hundred and sixty-five, as per certificate of James M. Mulliken, on file in this office; and William Kine, acting surveyor of the port, having certified that the said ship or vessel has one deck and no mast, and that her length is one hundred and twenty feet tenths; her breadth twenty-four feet and eight tenths; her depth four feet tenths; and that she measures ninety-eight and seventy-one hundreths tons, viz:

	Tons.	1-100.
Capacity under tonnage deck	98	70
Capacity between decks above tonnage deck		
Capacity of enclosure on upper deck, viz:		
Tonnage length ..... 119 feet.		
" depth amidship ..... 4 "		
Total tonnage	98	70

20 That she is a square-sterned steamboat, has no galleries, and plain head; and that the said James M. Mulliken, having agreed to the description and *and* admeasurement above specified, and sufficient security having been given, according to the said act, the said steamboat has been duly enrolled at the port of Savannah.

Given under my hand and seal of office at the port of Savannah, this

1st day of January, in the year one thousand eight hundred and sixty-six.

No naval officer.

(Signed) WYLLEY WOODBRIDGE,
Collector, L. S.

DISTRICT AND PORT OF SAVANNAH, GA.,
Collector's Office, January 16, 1868.

This is to certify that the within is a true copy from the records on file in this office.

Given under my hand and seal of office the day and year above written.

[SEAL.] J. JOHNSON,
Collector of Customs.

21 The plaintiff next offered himself, Josiah Stovall, who, being sworn, testified that he is the plaintiff in this case, and has heard it generally reported that James Mulliken was dead.

Frank H. Miller, esq., who, being sworn, testified that he had had some business with James Milliken, about a year ago; that when Milliken left Augusta, he went to New Orleans; witness wrote to a brother attorney at that city, who replied that Milliken had died there of yellow fever.

Death of James Milliken admitted by def'd'ts.

Plaintiff then rested his case.

The defendant then opened his case, and introduced Francis A. B. Jennings, who, being sworn, testified as follows:

Was employed on the steamer Eclipse, as first mate, in December, 1865, and to the time of her loss. On the morning of the 30th
22 December, 1865, when near Perrysburgh Landing, witness was on deck; the assistant engineer, Thomas Bottams, had just been relieved by the engineer, O. B. Johns; the latter had come on deck; was standing near witness. The boat was then on the Carolina side of the river, and being made fast to a wood-landing for the purpose of wooding. Witness heard a rumbling sound, and the engineer, Johns, cried out to him, "Save yourself. That's the boiler." Witness lay flat on the deck; Johns did the same, and afterwards rolled himself overboard. Witness got up and tried to secure the wreck; collected as many of the crew as he could find, and took hold of the cable to make her fast. Whilst trying to do so she went down, dragging the cable out of witness' hands. She sank in about fifteen minutes after the explosion. There was no time to save anything from the cargo. The captain and second
23 engineer were both killed. The boat sank in from 15 to 20 feet water.

Witness has run on the river for between 2 and 3 years, on this and other boats. He has always seen the boilers cleaned or *or* blown off at least once in every voyage; sometimes oftener. This is done to remove the collection of sand and other deposits. On the Eclipse the engineer was very careless in this respect and did not blow them out oftener than once in three weeks. The explosion was attributable to this negligence, and was its natural result.

Neither Plant nor Mulliken was *abode* the steamer at the time of her loss. Plant was in Augusta, and witness does not know where Mulliken was. The tide runs up the Savannah River some forty miles usually—above Purysburgh; the boat was lost below Purysburgh; she was en-

gaged in the river trade between Augusta and Savannah, stopping *on* points on both sides the river, and in both Georgia and South Carolina.

At one of the landings on the river between Augusta, the boat
24 took on a *quality* of lumber; it was stored between decks in the usual way, in cross tiers; went down with the boat.

Witness believes that the loss of the boat was due to the carelessness and negligence of the engineer in cleaning the boilers. Has never run on any boat where they were blown out so seldom.

Defendant here rested his case.

Plaintiff then introduced Capt. P. H. Ward, who being sworn, testified:

At the time of the loss of the steamboat Eclipse, was master of the steamer Julia St. Clair; soon after the explosion, arrived at the place of disaster. When it occurred, was in sight—near enough to hear the report, and heard it. Found the boat sinking. She did sink in about 15 to 20 feet water. Thinks a part of the cargo could have been saved, perhaps all, with proper exertions; the lumber could have raised, had the attempt been made before it was floated off by the current. The boat could be seen where she sank.

25 The tide-water extends above Parysburgh, usually. The boat was lost below. The custom on the river is to blow out the boilers at least once a week; thinks the failure to clean them for three weeks at a time shows great negligence and is sufficient to cause an explosion.

The boat traded to points on both sides of the Savannah River in South Carolina and Georgia, but most of the landings were on the Georgia side. There were but few in South Carolina.

In this case perhaps the length of time which I have considered and the number of cases in which the navigation of the Savannah River has been held to be an inland stream, may cause me not to appreciate fully the defence set up. The acts of Congress, as heretofore considered by courts, have been strictly confined to prescribed limits. This too may me to err in construing this statute or act of Congress. The boundary of the State of Georgia, extending as it does to the north bank
26 or South Carolina side of the Savannah River, all boats running in its waters may be said at all times to be on Georgia soil, and within her exclusive jurisdiction; and if the facts that the tide occasionally, or regularly even, floods a steamer, gives to Congress the power to legislate upon the subject, or if this act applies to the Savannah River, what river may this act not apply to? If the act was intended to apply to certain navigation or streams, and not to others, what river should be more exempt than the Savannah, the navigable portion of the same being entirely within the limits of the State of Georgia. There being evidence to support the verdict, with the law as given the jury in charge, and as believed then and now to be correct, the motion for new trial is overruled upon all the grounds taken.

W'M GIBSON, *Judge.*

MAY 25TH, 1869.

27 Services acknowledged of the within motion *Service acknowledged of the within motion* and grounds and brief of testimony, copy and noticed waived. It is agreed that said brief of testimony contains all the material evidence given at the trial in said case.

March 30, 1869.

A. R. WRIGHT, *Att'y for Pl'ff.*

STATE OF GEORGIA, *Richmond County:*

I, Ellery M. Brayton, clerk of the superior court, in and for said county, hereby certify that the above and foregoing writing constitutes a true and complete transcript of all the proceedings in the case of Henry B. Plant, pl'ff in error, versus Josiah Stovall; and that the accompanying bill of exceptions is the true original bill in said case, a copy of which having been duly made is now of file in this office; also that a bond in terms of the law has been given and approved, and the cost of this record, as well as all costs which have in the case.

{ SEAL'S } In witness whereof I have hereto set my hand and affixed
{ PLACE. } the seal of said court this 15th day of July, 1869.

E. M. BRAYTON, *Clerk.*

28 STATE OF GEORGIA, *Richmond County:*

Be it remembered that, at the January term, 1869, of Richmond superior court, his honor William Gibson, one of the judges of the superior courts in and for said State, then and there presiding, the cause of Josiah Stovall against Henry B. Plant, then and there pending upon the common law docket of said court, being an action upon the case against the said defendant as a common carrier to recover the value of a certain lot of sawed lumber, planks, and timber, of oak, ash, and hickory, estimated at two thousand dollars, came on to be heard on the twenty-seventh day of January, 1869.

And both plaintiff and defendant having announced "ready" the said cause was proceeded with, and after the testimony on behalf of both parties had been produced and argument had, the cause was submitted to the jury under the charge of the court.

And the jury found a verdict for the plaintiff for the sum of
29 fourteen hundred dollars, with interest thereon from January 1, 1867.

And during the same term of said court, the defendant by his counsel, made a motion for a new trial in said cause, upon the following grounds:

1. That the verdict was contrary to law.
2. That the verdict was contrary to evidence.
3. That the court erred in refusing to charge the jury: "That if the jury find that the steamer Eclipse was lost while engaged in navigation in tide-water, and between the States of Georgia and South Carolina, then the navigation is a part of the inter-State commerce, and under the Constitution is under the control of Congress."
4. That the court erred in refusing to charge the jury: "That if the said state of facts is found by the jury to exist, then the defendant, under the act of Congress of 1851, is liable only for the value of his interest in said steamer and her freights, if it be shown that he was not engaged in or conniving at the negligence which caused the loss."
5. That the court erred in refusing to charge the jury: "That
30 if the jury find there was a total loss of the vessel and cargo in the course of the voyage, there was no freight earned, and defendant had no interest in freight."
6. That the court erred in refusing to charge the jury: "That if the jury find that the vessel and cargo were a total loss during the voyage, the defendant had no further interest in the vessel and freight, and is relieved from his liability to the plaintiff under the act of Congress of 1851."

And the said motion having been submitted to his honor William Gibson, without argument, and a consent order taken that the decision thereon might be made in vacation with leave to either party to except thereto within thirty days after such decision should be rendered, afterwards, on the twenty-fifth day of May, 1869, his honor announced the following decision:

"In this case perhaps the length of time which I have considered, and the number of cases in which the navigation of the Savannah River has been held to be an inland stream, may cause me not to ap-
31 preciate fully the defence set up. The acts of Congress, as heretofore considered by courts, have been strictly confined to prescribed limits. This, too, may cause me to err in construing the statute or act of Congress. The boundary of the State of Georgia, extending as it does to the north bank or South Carolina side of the Savannah River, all boats running in its waters, may be said at all times to be on Georgia soil, and within her exclusive jurisdiction. And if the fact that the tide occasionally, or even regularly, floods a stream, gives to Congress the power to legislate upon the subject, or if this act applies to Savannah River, what river may this act not apply to? If the act was intended to apply to certain navigation and streams, and not to others, what river should be more exempt than the Savannah, the navigable portion of the same being entirely within the limits of the State of Georgia. There being evidence to support the verdict with the law as given in charge to the jury, and as believed then and now to be correct, the motion for new trial is overruled upon all the grounds taken.

"WILLIAM GIBSON, *Judge.*

"MAY 25, 1869."

32 To which said decision overruling the motion for a new trial upon all the grounds taken, and to every part thereof, the said defendant hereby excepts and assigns the same for error.

And as the facts aforesaid do not appear of record, the said defendant presents this his bill of exceptions within thirty days from the rendering such decision, and prays it may be signed and certified by the presiding judge in said cause, and that it may become a part of the record in the same.

Dated this (21) twenty-first day of June, A. D. 1869.

JOSEPH P. CARR,
For Plff in Error.

AT CHAMBERS, IN AUGUSTA,
June 24th, 1869.

I do certify that the foregoing bill of exceptions is true, and contains all the evidence material to a clear understanding of the errors complained of, and the clerk of the superior court of the county of Richmond is hereby required and ordered to make out a complete copy of the record of said case, and certify the same as such, and cause
33 the same to be transmitted to the January term, 1870, of the Supreme Court; that the errors, alleged to have been committed, may be considered and corrected.

WILLIAM GIBSON,
Judge Sup'r Court.

Due and legal service of the within bill of exceptions acknowledged,

and further service waived; copy to be furnished within five days. June 24, 1869.

A. R. WRIGHT,
Pl'ff's Att'ys.

34 *Judgment.*

Supreme Court of Georgia, Tuesday, March 29, 1870.

HENRY B. PLANT, PL'FF IN ERROR,
vs.
JOSIAH STOVALL, DEF'T IN ERROR.

This case came before the court upon a transcript of the record from the superior court of Richmond County, and after argument had, it is considered and adjudged by the court that the judgment of the court below be affirmed.

35 Supreme court of Georgia, Atlanta, December term, 1870.

HENRY B. PLANT, PLAINTIFF IN ERROR,
vs.
JOSIAH STOVALL, DEFENDANT IN ERROR.

HEAD-NOTE.

The plaintiff brought an action against the defendant as a common carrier to recover the value of a certain quantity of lumber shipped on board a steamboat running on the Savannah River, from the city of Augusta to Savannah, and it appeared from the evidence that the boat and cargo was lost by the carelessness of the engineer of the boat, and the defendant, on the trial, set up as a defence that he was not liable to the plaintiff for the loss of the lumber, under the provisions of the act of Congress of 3d March, 1851, which defence was overruled by the court below on a motion for a new trial: Held, that as the steamboat was running on the Savannah River, which is within the limits and
36 jurisdiction of this State, that said river is within the exception of the act of Congress of 1851, which provides "that the act shall not apply to the owner or owners of any canal-boats, barge or lighter, or to any vessel of any description whatsoever, used in rivers or inland navigation," and that there was no error in the court below in overruling the motion for a new trial on the several grounds stated in the motion therefor.

REPORT.

Common carriers.—Acts of Congress.—Before Judge Gibson, Richmond superior court, January term, 1869.

Stovall sued Plant, averring that he was a common carrier by the steamer Eclipse, from Augusta, Georgia, to Savannah, Georgia, and intermediate points on the Savannah River, and that as such he received certain lumber, &c., on the 27th of December, 1866, to be conveyed to Savannah, and carelessly, &c., failed to deliver it, to Stovall's damage $2,000 00. Stovall proved the delivery of the lumber, &c.,
37 on said steamer at Stovall's Landing, on said river, for delivery at Savannah, its value and its loss. It was shown that the Eclipse was blown up about twenty or thirty miles above Savannah; that the

44 UNITED STATES OF AMERICA, *ss:*

To Josiah Stovall, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Georgia, wherein Henry B. Plant is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Joseph E. Brown, chief justice of the supreme court of Georgia, this fifteenth day of April, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] Z. D. HARRISON,
Dep. Clerk.

JOSEPH E. BROWN,
Chief Justice of the Supreme Court of Georgia.

45 STATE OF GEORGIA, *Richmond County:*

Before me, a notary public in and for the State and county aforesaid, personally appeared David Porter, and makes oath, that on the twenty-ninth day of June, in the year that now is, he delivered a true copy of the within citation to Ambrose R. Wright, the attorney of the said Josiah Stovall.

DAVID PORTER.

Subscribed and sworn to before me this seventh day of July, A. D. 1870.

[SEAL.] JOHN A. BOHLER,
Not. Pub.

(Indorsed:) Supreme Court of the United States. Henry B. Plant, plaintiff in error, vs. Josiah Stovall, def'd't in error. Citation. Carr.

46 (*Copy.*)

Know all men by these presents that we, Henry B. Plant, and John J. Cohen as surety, are held and firmly bound unto Josiah Stovall, in the full and just sum of three thousand four hundred and thirty-seven dollars, to be paid to the said Josiah Stovall, his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this fourth day of April, in the year of our Lord one thousand eight hundred and seventy.

Whereas, lately at a term of the supreme court of Georgia, in a suit depending in said court, between the said Henry B. Plant, plaintiff in error, and Josiah Stovall, defendant in error, judgment was rendered against the said Henry B. Plant, and the said Henry B. Plant having obtained a writ of error to said supreme court, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Josiah Stovall, citing and admonishing to be and appear at a Supreme Court of the United

States, to be holden at Washington, the first Monday of December next:

47 Now, the condition of the above obligation is such, that if the said Henry B. Plant shall prosecute said writ of error to effect, and answer all damage and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

H. B. PLANT. [L. S.]
JOHN J. COHEN. [L. S.]

Signed, sealed, and delivered in presence of—
H. B. CAMPBELL.
W'M C. BARBER, *N. P., Rich. Co., Geo.* [SEAL.]

April 5th, 1870, approved by—

JOSEPH E. BROWN,
Chief Justice of the Supreme Court of Georgia.

(*Copy.*)

STATE OF GEORGIA, *Richmond County:*

Before me personally appeared John J. Cohen, who, being first duly sworn, makes oath and says that he is the surety on the within bond; that the signature thereto is in his own proper handwriting; that he signed the same on the day it bears date for the purpose therein mentioned, and that he is worth the amount for which he has obligated himself therein over and above all his debts, liabilities, and contracts, and the amount of homestead and personalty exemptions allowed by law.

JOHN J. COHEN.

Subscribed and sworn to before me this 4th day of April, A. D. 1870.
[SEAL.] W'M C. BARBER,
Notary Public, Richmond Co., Geo.

(Indorsed:) Supreme court of Georgia. Henry B. Plant, and John J. Cohen, surety, to Josiah Stovall. Bond for supersedeas on writ of error. Copy.

(Indorsement on cover:) No. 277. Henry B. Plant, plaintiff in error, vs. Josiah Stovall. Georgia sup. court. Filed 2d November. 1870.

IN THE SUPREME COURT OF THE UNITED STATES.

HENRY B. PLANT, Plaintiff in Error,
vs.
JOSIAH STOVALL, Defendant in Error,
} Brief of Appellant.

This was an action on the case brought by Defendant in Error against the Plaintiff in Error for the loss of certain lumber, planks, and timber, shipped from Augusta, Georgia, to Savannah, on a steamboat called the Eclipse, of Savannah, belonging to said Plaintiff in Error in part, and to James M. Milliken in part. The defence set up was that this steamboat was engaged in the inter-State commerce between South Carolina and Georgia, and that under the Act of Congress of March 3, 1851, section 3, entitled "an Act to limit the liability of ship-owners in certain cases," the Plaintiff in Error was discharged from all liability, inasmuch as the testimony showed that the loss of the said steamboat was occasioned by the misconduct or negligence of her navigators, without any collusion or participation on the part of her owners.

The Supreme Court of the State of Georgia decided that this defence availed nothing, because the case fell within the exceptions expressly made in the said Act of Congress.

This question, whether this case did fall within those exceptions, is the only one made in the assignment of Errors in this case.

It is contended, on the part of the Plaintiff in Error—

1st. That the jurisdiction of Congress is, by the Constitution, supreme over commerce with foreign nations, and among the several States, and with the Indian tribes.

Constitution, Art. 1, Sec. viii, §3.

Gibbons vs. Ogden. 9 Wheaton's Reports, 1.

Brown vs. Maryland. 12 Wheaton's Reports, 419.

2d. That the Act of March 3, 1851, is a regulation of commerce.

9 Statutes at Large, 635.

Martin's Summary of the Law of Nations as quoted by Mr. Justice Wayne, in Passenger Cases. 7 Howard's Reports, 416.

Gibbons vs. Ogden. 9 Wheaton's Reports, 229.

Almy vs. State of California. 24 How. R., 769.

Crandall vs. Nevada. 6 Wallace R., 35.

Brown vs. Maryland. 12 Wheaton R., 449.

3d. That the Act of March 3, 1851, is applicable to all cases arising in the foreign or inter-State commerce, which are not specially excepted from its operation by its terms, without regard to the locality in which the case may arise that requires its application.

Moore vs. Am. Transportation Co. 24 How. R., 1.
Almy vs. State of California. 24 How. R., 169.
Crandall vs. Nevada. 6 Wallace R., 35.

4th. Does this case fall within any of the exceptions of the Act of March 3, 1851? 'This Act shall not apply to the owner or owners of any canal boat, barge or lighter, or to any vessel of any description whatsoever used in rivers or inland navigation."

A—What vessels were meant? Plaintiff in Error contends they must be of the same sort or kind as those enumerated.

Brown's Legal Maxims, 451.
Lofft's Legal Maxims, 419
Sedgwick on C. & S. Law, 423.
Hunter vs. McGowan. 1 Bligh Rep, 180.
Morewood vs. Pollock, 18 E. L. & Eq. Rep., 343.
Regina vs. Reed. 28 E L. & Eq. R., 133.
Reed vs. Ingham. 26 E. L. & Eq. R., 164.
Kames' Elements of Criticism. Pp. 3-5.
Moore vs. Am. Transp. Co. 24 Howard, 36.

B—What is meant by inland navigation?

The admiralty jurisdiction of the United States extends to the great inland rivers, and indeed to all inland navigation.

Fitzhugh vs. Genessee Chief. 12 How. R., 443.
The Hill vs. Trevor. 4 Wall. R., 555.
The Moses Taylor. 4 Wall. R., 411.

Within that jurisdiction are included all cases of maritime contracts as well as torts.

DeLovis vs. Boit. 2 Gallison Rep., 398.
Merchants Bank vs. N. J. S. Nav. Co., 6 How. R., 344.
Insurance Company vs. Dunham. 11 Wall. R., 1.

The contract of affreightment is the most familiar of maritine contracts, except perhaps seamen's wages.

Congress, therefore, had jurisdiction over inland navigation considered simply as a geographical distinction, and could have extended this Act to cases arising upon the inland rivers and waters by virtue of its admiralty jurisdiction.

The object of the Act was to encourage ship building. It was made necessary by the uneasiness created by the decision in the Merchants Bank vs. N. J. S. Nav. Co. 6 How. R., 344, sec. 24; How. R., 38. Is it presumable that Congress intended to limit its benefits to the sea coasts, and to leave the great arteries which traverse the continent unused because of the fearful responsibilities attached to those who should undertake to navigate them?

That construction would only be adopted in case no other reason could be assigned. But one is readily found in the reservation of the States of the right to control each its own internal trade.

Gibbons vs. Ogden. 9 Wheat. R., 195.

The exception was inserted only *ex abundanti cautela*—and the words themselves bear out this view. Inland is defined by Webster, "carried on within a country; domestic, not foreign, as inland trade or transportation, inland navigation." Worcester: "Pertaining to the interior of a country; internal; opposed to coasting; inland navigation."

An inland Bill of Exchange is one drawn by a citizen of one State upon another citizen of the same State.

Story on Bills. 22-23.

In the Statute of Limitations "beyond seas" is construed to mean beyond the jurisdiction of a State.

Murray's Lessee vs. Baker. 3 Wheat. R., 541.

Shelby vs. Guy. 11 Wheat. R., 361.

Bank of Alexandria vs. Dyce. 14 Pet. R., 141.

Inland navigation, it is contended, is used here as defined by Webster. "The passing of boats or small vessels on rivers, lakes, or canals in the interior of a country." In this connection "the interior of a State."

Plaintiff in Error insists that Congress by these words meant only "internal commerce of a State." This view is strengthened by the context, where rivers are placed apparently as a synonym for "inland navigation."

To give the broadest scope to the exception, it only excludes barges, lighters, canal boats, and the like craft, no matter where employed, and vessels of every kind used solely in the internal commerce of a State.

5. If this case falls within the statute, the Plaintiff in Error was not liable, and his defence should have been sustained.

The evidence abundantly proves the loss of the boat and cargo. To that the law adds the loss of freights.

Abbott on Shipping. 406–407.
Angrel on Carriers. Sec. 282.

And, therefore, Plaintiff in Error was in no wise liable.

Wattson vs. Marks. 2 Am. Law Reg., 157.
Moore vs. Am. Transp. Co. 24 How. R., 1.

For these reasons it is contended the judgment of the Supreme Court of Georgia should be reversed.

S. W. JOHNSTON,
JOSEPH P. CARR,
of Counsel for Plaintiff in Error.

Supreme Court of the United States

HENRY B. PLANT,

Plaintiff in Error.

vs.

JOSIAH STOVALL,

Defendant in Error.

BRIEF

OF

PLAINTIFF IN ERROR.

S. W. JOHNSTON,
JOSEPH P. CARR,
of Counsel for Plaintiff in Error.

E. H. PUGHE, PRINTER, AUGUSTA, GA.